In the High Court of Judicature at Madras

Dated: 18/07/2002

Coram

The Hon'ble Mr.Justice P.D.DINAKARAN

Second Appeal No.1049 of 1989

M/s.India Meters Ltd.,
Plot No.14, Industrial Estate,
Ambatur, Madras-600058. ..Appellant

-Vs-

Motichand Sivaraj,
by Partner Kanhalal Jain,
carrying on business at
No.89, Perumal Mudali Street,
G.T., Madras-1. ..... Respondent

Appeal against the judgment and decree dated 17.7.1985, made in A. S.No.301 of 1985 on the file of the learned IV Additional Judge, City Civil Court, Madras, against the judgment and decree dated 30.11.1983 , made in O.S.No.3153 of 1975 on the file of the learned VIII Assistant Judge, City Civil Court, Madras.

!For Appellant : Mr.K.S.Vamsidhar for
Mr.T.K.Seshadri

^For Respondent : No Appearance

:J U D G M E N T
Heard Mr.K.S.Vamsidhar, learned counsel appearing for the appellant. There is no representation on behalf of the respondent.

2. The appellant in the second appeal is the defendant in O.S.No.31 53 of 1975 on the file of the learned VIII Assistant Judge, City Civil Court, Madras, laid by the respondent/plaintiff for recovery of a sum of Rs.1,682.92 with interest at the rate of 12% p.a. towards the sale consideration of the supply of steel furniture to the appellant/ defendant.

3. The appellant/defendant claimed that they are entitled for the benefit of the Tamil Nadu Relief Undertakings (Special Provisions) Act, 1969, and therefore, there is no cause of action to file the suit during the period of moratorium.

4. Both the Courts below concurrently finding that the said Act specifically provides that in all pending proceedings for an enforcement of contract entered by a relief undertaking, the proceeding can be stayed and after the expiry of the period of moratorium, the proceeding can be revived, held that there is no bar for institution of a suit against the relief undertaking even during the period when the Act was in force as the relief under the said Act is only temporary; the liability arising out of the contract claimed by such undertaking is not totally wiped off; and the creditors of the undertaking have not lost their remedy to seek appropriate relief. The Courts below have further held that the mere suspension of the enforcement of the relief under the contract is therefore, would not amount to totally bar for institution of the suit and therefore, decreed the suit filed by the respondent/plaintiff. Hence, the above second appeal.

5. The only substantial question of law argued before me in the second appeal is that whether the scope of the provisions of the Tamil Nadu Relief Undertakings (Special Provision) Act, 1969, is properly considered by the Courts below when there was no cause of action on the date of filing of the suit, assuming the relief under the said Act is only temporary.

6. In this regard, Mr.K.S.Vamsidhar, learned counsel appearing for the appellant/defendant, relies on the decision of a Division Bench of this Court in Gopilal J. Nichani vs. M/s.Trac Industries & Components Ltd., Madras and others, reported in 1978 (2) MLJ 94, wherein it is held as follows:

"Section 6 of the Act provides for a stay of the pending proceedings against the relief undertaking. But, the suit as against the relief undertaking having been instituted after the notification is not maintainable".

7. The Division Bench of this Court has held that the suit filed against the relief undertaking after the notification of the Act is not maintainable in law for want of cause of action. In other words, even though the relief under the Tamil Nadu Relief Undertakings (Special Provisions) Act, 1969, would not amount to wipe off the liability of the undertaking towards the creditors, as the relief under the said Act is only temporary, it would only enable the creditors to file the suit after the period of moratorium, as the period of moratorium protects the limitation for filing the said suit.

8. Therefore, applying the ratio laid down by the Division Bench of this Court and holding that the suit filed after the notification of the Act is not maintainable, for want of cause of action on the date of filing of the suit, I am obliged to interfere with the judgment and decree of the Courts below, set aside the same and dismiss the suit holding that the Courts below have failed to appreciate the scope of the Act properly. Consequently, the second appeal is allowed. No costs.

18.07.2002.
Index: Yes
Internet: Yes

ATR

To,

The Registrar,
City Civil Court,
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The Section Officer,
'VR' Section, High Court, Madras.

P.D.DINAKARAN, J.

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